

REMARK**Response to Claim Rejections Under 35 U.S.C. §102**

Claims 1, 31, 40 and 43 are rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by McGuckin, Jr. (U.S. Pat. No. 6,280,450). The McGuckin Jr. device, however, discloses the use of a conical swath disposed about tissue support members which encapsulates the tissue to be removed. The present device discloses a tissue expander located proximal to the target tissue which is secured to the distal shaft section to expand the tissue pathway for removal rather than expanding to encapsulate the target tissue. All of the pending claims require the tissue expander to be proximal to the tissue cutter and the tissue securing member, both of which are proximal to the distal tip. The prior art cited by the Examiner does not have these features.

Examiner also refers to the tissue containment bag (216) of the McGuckin Jr. device as a tissue securing member, however, the containment bag does not perform the same function as the tissue securing members in the present application. The tissue securing members of the present device do not completely surround the tissue specimen to be removed, rather they attach to a portion of the tissue to be removed and hold it in place while the cutting members separate the tissue from the body and while the device is removed.

The McGuckin Jr. reference fails to teach a device having all of the features of the device in the present application and requires features not included. Therefore, the present claims are not anticipated by the reference.

Response to Allowable Subject Matter

Claims 3-19, 32, 41 and 42 were objected to as being dependent upon a rejected base claim, but the Examiner indicated that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. Applicants believe the independent claims from which claims 3-19, 32, 41 and 42 depend are allowable in view of the above amendments, so the objected dependent claims would likewise be allowable.

Applicant would like to draw to examiners attention claims 5-17, 19, and 41-43. Applicant previously withdrew these claims from consideration, however, Examiner lists these claims as pending in the present office action.

Applicants believe the pending claims define patentable subject matter.

Reconsideration and an allowance are earnestly solicited.

Respectfully submitted,

By: 

Edward J. Lynch
Registration No. 24,422
Attorney for Applicants

DUANE MORRIS LLP
One Market
Spear Tower, Ste. 2000
San Francisco, CA 94105
Telephone: (415) 371-2200
Facsimile: (415) 371-2201
Direct Dial: (415) 371-2267